

**IT IS THE VENDOR'S RESPONSIBILITY TO CHECK FOR
ADDENDUMS PRIOR TO SUBMITTING PROPOSALS**

**REQUEST FOR PROPOSALS
SPECIFICATION NO. 03-166**

The City of Lincoln, Nebraska intends to enter into a contract and invites you to submit a sealed proposal for
:

**CITY AUDITING SERVICES
AND
WATER AND WASTEWATER AUDITING SERVICES**

MEETING OR EXCEEDING THE CITY OF LINCOLN'S SPECIFICATIONS

Sealed proposals will be received by the City of Lincoln on or before 12:00 noon Wednesday, **June 25, 2003** in the office of the Purchasing Agent, located at 440 South 8th Street, Suite 200, Lincoln, Nebraska 68508. Only the names of the proposers will be read in the Bid/Conference room located on the First Floor.

Proposers should take caution if U.S. mail or mail delivery services are used for the submission of proposals. Mailing should be made in sufficient time for proposals to arrive in the Purchasing Division, prior to the time and date specified above.

THE CITY OF LINCOLN REQUEST FOR PROPOSALS FOR CITY AUDIT SERVICES

1. INTRODUCTION

- 1.1 The City of Lincoln is seeking proposals for furnishing audit services to the City of Lincoln, in accordance with generally accepted auditing standards, of financial statements prepared in accordance with generally accepted accounting principals applicable to governments, and in accordance with provisions of the Single Audit Act of 1984 as amended in 1996, OMB Circular A-133, and Revenue Rulings 35-96-2 and 35-96-3 as published by the Nebraska Department of Revenue, Charitable Gaming Division, and applying agreed-upon procedures as specified in Title 132 – Integrated Solid Waste Management Regulations.
- 1.2 The service is to cover the four-year period beginning September 1, 2002, through the fiscal year ending August 31, 2006 (See Section 7.3).
- 1.3 The proposal information requests and evaluation criteria are as follows:

2. INDIVIDUAL AUDIT STAFF TECHNICAL QUALIFICATIONS

RFP INFORMATION REQUESTS

EVALUATION CRITERIA

- | | |
|---|---|
| 2.1 Describe the experience in government audits of each senior and higher level person assigned to this audit, including years on each job and their position while on each audit. Indicate the percentage of time the senior will be on-site. Provide a list of similar prior and current audits for each senior person assigned to this audit. | Each individual, including senior and supervisory persons, should have performed at least three government audits within the past two years. |
| 2.2 Describe the relevant educational background of each individual assigned to the audit. This should include seminars and courses attended within the past two years. | Each individual, including senior & supervisory persons, should have attended at least one governmental accounting or auditing update course within the past two years. |
| 2.3 Describe experience of assigned individuals in auditing relevant to particular government organizations, programs, activities or functions. | Points are given only if one or more persons have experience in a particular government organization, program, activity or function relevant to this audit. |
| 2.4 Describe participation of each senior and higher level person assigned to the audit in state or national professional organizations, speaker or instructor roles in conferences or seminars, or authorship of articles and books. | At a minimum, the partner or manager/supervisor should have some participation in state or national professional organizations. |
| 2.5 Describe experience of assigned individuals in audits performed under Revenue Rulings 35-96-2 and 35-96-3. | Individual assigned should have performed a minimum of two (2) Keno audits. |

3. **AUDIT ORGANIZATION/LOCAL OFFICE TECHNICAL QUALIFICATIONS AND APPROACH**

<u>RFP INFORMATION REQUESTS</u>	<u>EVALUATION CRITERIA</u>
3.1 Indicate the number of people (by level) located within the local office that will conduct and supervise the audit.	Provides depth of staff within the local office.
3.2 Provide a list of the local office's current and prior government audit clients indicating the type(s) of services performed and the number of years served for each.	Provides depth of government audit experience within the office, as well as the years devoted to government auditing.
3.3 Indicate your firm's expertise in providing interpretations of pronouncements requiring new or changed financial disclosures and their applications to the financial statements, include resources available to you other than your local office. List the name of the governmental clients that your local office has provided this service to and the type of help provided.	Provides depth of additional technical expertise available within the local office and other firm resources.
3.4 Indicate training and experience with audits performed under the Single Audit Act of 1984 as amended in 1996 and OMB Circular A-133 by individuals on the audit team.	Provides depth of understanding of the Single Audit Act of 1984 as amended in 1996 and OMB Circular A-133.
3.5 Describe your audit organization's participation in AICPA-sponsored or comparable quality control programs.	This is related to quality of the audit and review process within the audit organization and local office.
3.6 Describe your approach to the audit. This should include at least the following points:	
3.6.1 Type of audit program used (tailor-made, standard government).	Tailor-made, Standard government
3.6.2 Use of statistical sampling.	Denotes sophisticated audit approach.
3.6.3 Organization of audit team and approximate percentage of time spent on audit.	Provides depth of audit team.
3.6.4 Management letter (provide a sample letter).	Emphasis should be on improving operational efficiencies.
3.6.5 Typical assistance expected from government's staff.	Reasonable or unreasonable.
3.6.6 Tentative schedule for completing audit within specified deadlines of the RFP, including time estimates, number of hours required to complete audit, i.e. percentage of time for report review and detailed testing, and commencement & completion dates.	Reasonable or unreasonable.
3.7. Describe your audit organization's experience with audits performed under Revenue Rulings 35-96-2 and 35-96-3.	Provides depth of understanding of Revenue Rulings 35-96-2 and 35-96-3.

3.8. Describe your audit organization's experience with performing procedures specified in Title 132 – Integrated Solid Waste Management Regulations related to financial assurance requirements.

Provides depth of understanding of Title 132 – Integrated Solid Waste Management Regulations.

4. **AUDIT FEE**

RFP INFORMATION REQUESTS

EVALUATION CRITERIA

4.1 The proposal shall include an audit fee for a four (4) year period. The fee should include a fixed price proposal for each of the four years, subject to adjustment due to mutually agreed upon extenuating circumstances. Implementation of new GASBs should be considered within the scope of the audit and included in the fixed price proposal. Indicate how the fee was determined. Submit separate fees for City Audit, Landfill Audit (including Title 132 procedures), EMS Audit and Keno Audit.

Maximum points

4.2 Price proposals are to be submitted in a separate, sealed envelope. They will only be opened when the firms have been ranked and interviewed.

5. **SCOPE OF THE AUDIT**

- 5.1 The audit services are to cover all City of Lincoln funds with the exception of the following: Lincoln Electric System, Lincoln Water System, and Lincoln Wastewater System.
- 5.2 The audit must include provisions of the Single Audit Act of 1984 as amended in 1996 & include the financial and compliance audit requirements of OMB Circular A-133.
- 5.3 The audit should lead to the expression of an unqualified opinion on the financial statements that collectively comprise the City's basic financial statements, and a supplemental, in relation to, opinion to the combining and individual nonmajor fund statements.
- 5.4 The audit should lead to the expression of additional unqualified opinions directed to the Landfill Revenue fund and the Emergency Medical Services (EMS) fund. Significant attention should be directed toward cash counts, cash handling procedures and receivables accounting procedures.
- 5.5 The service should **include** interpretations (written upon request) of GASB pronouncements and specific guidance in applying them to the City's preparation of financial statements in accordance with generally accepted accounting principles applicable to governments.
- 5.6 The service shall include assistance to the City to continue to meet requirements for the GFOA Certificate of Achievement for Excellence in Financial Reporting Program.
- 5.7 The service shall include the preparation of a formal management letter.
- 5.8 The service shall include the performance of an annual audit of the City's Keno operation as required by Revenue Rulings 35-96-2 and 35-96-3 for years ending June 30, 2003, 2004, 2005 and 2006.
- 5.9 The service shall include applying agreed-upon procedures as specified in Title 132 – Integrated Solid Waste Management Regulations, to assist the Nebraska Department of Environmental Quality in evaluating the City of Lincoln's use of the financial test to demonstrate financial assurance for closure and post-closure care.

6. **ADDITIONAL INFORMATION**

- 6.1 The City of Lincoln uses the JDEdwards Financial Accounting System.
- 6.2 The Lincoln Electric System, Lincoln Water System and Lincoln Wastewater System funds are reviewed under separate audit contracts.
 - 6.2.1 It has been determined, under criteria of GASB 14, that these functions are departments of the City of Lincoln and are included as major funds in the City's Comprehensive Annual Financial Report.
- 6.3 Funds are structured by fund types as specified in GAAFR.
- 6.4 The City's accounting records are maintained on a cash basis for receipts and modified cash basis for expenditures.
 - 6.4.1 The accounting records are converted to GAAP at fiscal year end. Encumbrances are carried forward as appropriations for budgetary accounting.
- 6.5 City personnel will post all required adjusting and closing entries.
 - 6.5.1 The City's standard is to have no reportable audit differences.

- 6.6 City personnel will prepare all statements and schedules.
 - 6.6.1 City personnel will also prepare the notes to the basic financial statements, but some assistance may be required from the Auditors.
 - 6.6.2 The City will be responsible for printing the Comprehensive Annual Financial Report.
 - 6.6.3 The Auditor will be responsible for printing the Landfill, EMS and Keno Audits.
- 6.7 Total entity-wide program expenses and revenues for the fiscal year ended August 31, 2002 (less Lincoln Electric System, Lincoln Water System, and Lincoln Wastewater System) were approximately \$188,000,000 and \$132,000,000, respectively.
 - 6.7.1 Total general revenues and transfers (excluding the Utility funds) were approximately \$113,000,000.
- 6.8 Total disbursements for the fiscal year ended August 31, 2002 for the Landfill Revenue Fund were \$5,279,000.
- 6.9 Total disbursements for the fiscal year ended August 31, 2002 for the EMS Fund were \$3,435,000.
- 6.10 As of June 1, 2003, the City has implemented the assessment of Infrastructure Impact Fees.
 - 6.10.1 The first year activity should be minimal, but when fully implemented the City estimates annual collections at a maximum of \$2.8 million for streets and \$260,000 for parks over the next four years.
- 6.11 Also implemented June 1, 2003, is a Landfill Occupation Tax.
 - 6.11.1 It is estimated that the revenue generated by this tax will be approximately \$1.7 million annually.
- 6.12 The City's previous year's Comprehensive Annual Financial Report can be found on the City's web site at the following address:
 - 6.12.1 <http://interlinc.ci.lincoln.ne.us/city/finance/account/cafr2002.htm>
- 6.13 The City has been awarded the Government Finance Officer's Association Certificate of Achievement for Excellence in Financial Reporting for the fiscal years ending 1983 through 2001 and has submitted the 2002 CAFR for consideration.
 - 6.13.1 The City plans to continue participation in the Certificate of Achievement Program.
- 6.14 The City's fiscal year is September 1, through August 31.
- 6.15 City staff will provide assistance in locating documents and files and in understanding the system reports.
- 6.16 The audit committee will evaluate all proposals and may select for oral presentation three finalists, based on the evaluation criteria identified in Section I.
- 6.17 The new Reporting Model, implemented in the year ended August 31, 2002, will be in effect during this contract period.
 - 6.17.1 Auditor guidance/assistance will be required to accurately maintain financial reporting statements, calculations and procedures as required by GASB.
- 6.18 The City issues bonds periodically and will use the CAFR liftable statements in our Bond document.
 - 6.18.1 The City will require an audit opinion on the liftables only.
 - 6.18.2 If your firm requires a review of the Bond document before we are given a separate opinion on these liftables, please include a fixed fee for this review with the fee schedule requested in Section 7.3.
- 6.19 The Finance Department is issuing this RFP for the City of Lincoln.
 - 6.19.1 Please refer all inquiries in writing to Peggy Watchorn, City Controller's Office, 555 South 10th Street, Lincoln, NE 68508.
 - 6.19.2 Send copy of all inquiries to Vince M. Mejer, Purchasing Agent, 440 So. 8th St., Lincoln, NE 68508.

7. **INSTRUCTIONS TO OFFERER**

- 7.1 Each proposal must be legibly printed in ink or typed, include the full name and business address of the firm, and be signed in ink by the contractor.
 - 7.1.1 A proposal by a firm or organization other than a corporation must include the name and address of each member.
 - 7.1.2 A duly authorized official must sign a proposal by a corporation in the name of such corporation thereof.
 - 7.1.3 Any person signing a proposal for a firm, corporation or other organization unit should show evidence of his/her authority so to bind such firm, corporation, or organization.
- 7.2 The City, upon presentation of billing statements from the contractor for services rendered, will make periodic payments, but not more than monthly.
 - 7.2.1 A separate invoice must be presented for work on each audit, i.e. City, Landfill, EMS, and Keno.
- 7.3 The proposal shall include an audit fee for each of the four (4) year periods.
 - 7.3.1 The offer shall include a fixed price proposal for each of the four years, subject to adjustment due to mutually agreed upon extenuating circumstances.
 - 7.3.2 Indicate how the fee was determined.
 - 7.3.3 (Price proposals must be submitted in a separate, sealed envelope).
 - 7.3.4 In addition to a fixed price proposal for the City audit:
 - 7.3.4.1 The proposal shall include a separate fixed price proposal for the annual audit of the Landfill Revenue fund; to include the agreed-upon procedures related to Title 132.
 - 7.3.4.2 The proposal shall include a separate fixed price proposal for the annual audit of the EMS Fund.
 - 7.3.4.3 The proposal shall include a separate fixed price proposal for the annual audit of the City's Keno operation.
- 7.4 The proposal shall include a fee schedule to be used should the firm be called upon to perform auditing or accounting services that fall outside the scope of the audit service during the four year contract period.

- 7.5 The proposals will be accepted at City Purchasing Department, Suite 200, 440 South 8th Street, Lincoln, NE 68508, not later than **12:00 Noon on June 25, 2003.**
 - 7.5.1 Include an original and five copies of the proposal.
 - 7.5.2 The City of Lincoln reserves the right to accept any proposal, reject any or all proposals, or to waive any defects in any proposal.
 - 7.5.3 Any proposal received after the specified time for filing will be rejected.
 - 7.5.4 Price proposals are to be submitted in a separate, sealed envelope.
 - 7.5.5 Include only one (1) fee envelope.
- 7.6 The proposal should be directed to the following approximate time schedule for the City, Landfill, and EMS Audits:
 - 7.6.1 Prior to August 31: Records can be made available to contractor for preliminary audit work (planning, testing, etc).
 - 7.6.2 September 1 - November 30: City Finance personnel perform adjusting and closing entries and prepare financial statements.
 - 7.6.3 December 1 - January 15: Contractor performs audit of financial statements.
 - 7.6.4 February 1: Audit opinions and management letters presented to the City.
 - 7.6.5 February 15: CAFR printed.
 - 7.6.6 Contractor must be available for technical interpretations and guidance anytime.
- 7.7 The proposal should be directed to the following approximate time schedule for the Keno Audit – with the exception of the first year which will be effective on the date of award:
 - 7.7.1 Prior to June 30: Records can be made available to contractor for preliminary audit work (planning, testing, etc).
 - 7.7.2 July 15 – August 31: Contractor performs agreed-upon procedures as required in Revenue Ruling 35-96-2 and 35-96-3.
 - 7.7.3 October 1: Final Audit Reports presented to the City.

8. AWARDING OF AUDIT CONTRACTS (tentative timetable)

8.1	Final Date of Receipt of Proposals	06/25/03
8.2	Notification of Finalists	06/30/03
8.3	Oral Presentation by Finalists	07/10/03
8.4	1 st Reading by City Council	07/21/03
8.5	Council Approval	07/28/03

THE CITY OF LINCOLN REQUEST FOR PROPOSALS FOR AUDIT SERVICES FOR THE WATER AND WASTEWATER UTILITIES

1. INTRODUCTION

- 1.1 The City of Lincoln is seeking proposals for furnishing audit services to the City of Lincoln in accordance with generally accepted auditing standards and to prepare financial statements in accordance with generally accepted accounting principals applicable to governments, specifically enterprise funds, and in accordance with provisions of the Single Audit Act of 1984 as amended in 1996 and OMB Circular A-133.
- 1.2 The service is to cover the City's fiscal year of September 1, 2002, through August 31, 2003, and the next three subsequent fiscal years for a total four-year contract (See Section 7.3).
- 1.3 The proposal information request and evaluation criteria is as follows:

2. INDIVIDUAL AUDIT STAFF TECHNICAL QUALIFICATIONS

RFP INFORMATION REQUESTS

EVALUATION CRITERIA

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| <p>2.1 Describe the experience in government utility audits of each senior and higher level person assigned to the audit, including years on each job and their position while on each audit. Indicate the percentage of time the senior will be on-site. Provide a list of prior and current similar audits for each senior person assigned this audit.</p> | <p>Each individual including the senior and supervisory persons should have performed at least three government audits within the past two years.</p> |
| <p>2.2 Describe the relevant educational background of each individual assigned to the audit. This should include seminars and courses attended within the past two years.</p> | <p>Each individual including senior and supervisory persons should have attended at least one governmental accounting or auditing update course within the past two years.</p> |
| <p>2.3 Describe experience of assigned individuals in auditing relevant particular government utility organizations, programs, activities or functions.</p> | <p>Points are given only if one or more persons have experience in a particular government utility organization, program, activity or function relevant to this audit.</p> |
| <p>2.4 Describe participation of each senior and higher level person assigned to the audit in state or national professional organizations, speaker or instructor roles in conferences or seminars or authorship of articles and books.</p> | <p>At a minimum, the partner or manager/supervisor should have some participation in state or national professional organizations.</p> |

3. AUDIT ORGANIZATION/LOCAL OFFICE TECHNICAL QUALIFICATIONS AND APPROACH

RFP INFORMATION REQUESTS

EVALUATION CRITERIA

- | | |
|---|--|
| <p>3.1 Indicate the number of people (by level) located within the local office that will conduct and supervise the audit.</p> | <p>Provides depth of staff within office.</p> |
| <p>3.2 Provide a list of the local office's current and prior government audit clients indicating the type(s) of services performed and the number of years served for each.</p> | <p>Provides depth of government audit experience within the office, as well as the years devoted to government auditing.</p> |
| <p>3.3 Indicate your firm's expertise in providing interpretations of pronouncements requiring new or changed financial disclosures and their applications to the financial statements, include resources available to you other than your local office. List the name of the governmental utility clients that your local office has provided this service to and the type of help provided.</p> | <p>Provides depth of additional technical expertise available within the local office and other firm resources.</p> |

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| 3.4 | Indicate training and experience with audits performed under the Single Audit Act of 1984 as amended in 1996 and OMB Circular A-133 by individuals on the audit team.. | Provides depth of understanding of the Single Audit Act of 1984 as amended in 1996 and OMB Circular A-133 |
| 3.5 | Describe your audit organization's participation in AICPA-sponsored or comparable quality control programs. | This is related to quality of the audit and review process within the audit organization and local office. |
| 3.6 | Describe your approach to the audit. This should include at least the following points: | |
| 3.6.1 | Type of audit program used (tailor-made, standard utility). | Tailor-made
Standard utility |
| 3.6.2 | Use of statistical sampling. | Denotes sophisticated audit approach. |
| 3.6.3 | Organization of audit team and approximate percentage of time spent on audit. | Provides depth of audit team. |
| 3.6.4 | Management letter (provide a sample letter). | Emphasis should be on improving operational efficiencies. |
| 3.6.5 | Typical assistance expected from government's staff. | Reasonable or unreasonable |
| 3.6.6 | Tentative schedule for completing audit within specified deadlines of the RFP, including time estimates, commencement and completion of work, including elapsed time and total number of hours to complete work, and anticipated date for financial reports to be delivered to Public Works/Utilities Business Office. | Reasonable or unreasonable |
| 3.7 | Provides depth of understanding of Revenue Rulings 35-96-2 and 35-96-3. | Describe your audit organization's experience with audits performed under Revenue Rulings 35-96-2 and 35-96-3. |
| 3.8 | Describe your audit organization's experience with performing procedures specified in Title 132-Integrated Solid Waste Management Regulations related to financial assurance requirements. | Provides depth of understanding of Title 132-Integrated Solid Waste Management Regulations. |

4. AUDIT FEE

RFP INFORMATION REQUESTS

- 4.1 The proposal shall include an audit fee for a four (4) year period. The fee should include a fixed price proposal for each of the four years, subject to adjustment due to mutually agreed upon extenuating circumstances. Indicate how the fee was determined.
- 4.2 Price proposals are to be submitted in a separate, sealed envelope. They will only be opened when the firms have been ranked and interviewed.

EVALUATION CRITERIA

Maximum points.

5. SCOPE OF THE AUDIT

- 5.1 The audit services are to cover the Lincoln Water System and the Lincoln Wastewater System, which comprise two separate utilities, with separate accounting records.
- 5.2 The audit should lead to the expression of an unqualified opinion directed to the financial statements of each utility.
- 5.3 The service should include interpretations of FASB and GASB pronouncements and guidance in applying them to the preparation of financial statements in accordance with generally accepted accounting principles.
- 5.4 The service should include the preparation of formal management letters.
- 5.5 The audit must include provisions of the Single Audit Act of 1984 as amended in 1996 and include the Financial and Compliance Audit Requirements required by OMB Circular A-133.

6. ADDITIONAL INFORMATION

- 6.1 The City uses the JDEdwards Financial Accounting System.
- 6.2 The water utility and wastewater utility records are maintained separately.
- 6.3 Total receipts are expenditures for the Fiscal Year 2001-02 were:
 - 6.3.1 water utility operating revenues of \$22,064,404 and operating expenditures of \$16,605,137;
 - 6.3.2 wastewater utility operating receipts of \$15,026,486, and
 - 6.3.3 operating expenditures of \$12,659,850.
- 6.4 City personnel will post adjusting and closing entries.
 - 6.4.1 The City's standard is to have no reportable audit differences.
- 6.5 City personnel will prepare all statements and schedules.
 - 6.5.1 City personnel will also prepare notes to the financial statements, but some assistance may be required from the auditors.
- 6.6 The City's fiscal year is September 1 through August 31.
- 6.7 As of June 1, 2003, the City has implemented the assessment of Infrastructure Impact Fees.
 - 6.7.1 The first year activity should be minimal.
 - 6.7.2 During the next four Fiscal Years, the City is anticipating collecting a maximum annual amount of approximately \$830,000 for water improvements and \$410,000 for wastewater improvements.
- 6.8 City staff will provide assistance in locating documents and files and in understanding the system reports.
- 6.9 The audit committee will evaluate all proposals and may select for oral presentation three finalists, based on the evaluation criteria identified in Sections 2 and 3.
- 6.10 This RFP is being issued for the City of Lincoln by the Finance Department.
 - 6.10.1 Please refer all inquires in writing to Margaret Remmenga, Public Works/Utilities Business Manager, 555 South 10th Street, Lincoln, NE 68508.
 - 6.10.2 Send copy of all inquiries to Vince M. Mejer, Purchasing Agent, 440 So. 8th St., Lincoln, NE 68508.

7. INSTRUCTIONS TO OFFERER

- 7.1 Each proposal must be legibly printed, including the full name and business address of the firm, and be signed in ink by the contractor.
 - 7.1.1 A proposal by a firm or organization other than a corporation must include the name and address of each member.
 - 7.1.2 A proposal by a corporation must be signed in the name of such corporation by a duly authorized official thereof.
 - 7.1.3 Any person signing a proposal for a firm, corporation, or other organizational unit should show evidence of his/her authority to bind such firm, corporation, or organization.
- 7.2 Payment in full will be made by the City within thirty (30) days after the completed report is presented to the City; interim payments can be negotiated.
- 7.3 The proposal shall include an audit fee for each of the four (4) year periods.
 - 7.3.1 The fee should include a fixed price proposal for each of the four years, subject to adjustment due to mutually agreed upon extenuating circumstances.
 - 7.3.2 Indicate how the fee was determined.
 - 7.3.3 (Price proposals must be submitted in a separate sealed envelope).
- 7.4 The proposal shall include a fee schedule to be used should the firm be called on to perform auditing or accounting services which all outside the scope of the audit service during the four year contract period.
- 7.5 The proposals will be accepted at City Purchasing Department, Suite 200, 400 South 8th Street, Lincoln, NE 68508, not later than **12:00 Noon on Wednesday June 25, 2003.**
 - 7.5.1 Include an original and five copies of the proposal.
 - 7.5.2 The City of Lincoln reserves the right to accept any proposal, reject any or all proposals, or to waive any defects in any proposal.
 - 7.5.3 Any proposal received after the specified time for filing will be rejected.
 - 7.5.4 Price proposals are to be submitted in a separate, sealed envelope.
 - 7.5.4.1 Include only one fee envelope.
- 7.6 The proposal should be directed to the following approximate time schedule:
 - 7.6.1 Prior to August 31: Records can be made available to contractor for preliminary audit work (planning, testing, etc.).
 - 7.6.2 August 31: Contractor performs year-end cut-off procedures (inventories, cash counts, confirmations, etc.).
 - 7.6.3 September 1 - November 30: Contractor performs audit; review financial statements; prepare opinions and management letters.
 - 7.6.4 November 30: Audit opinion and management letter presented to Utility.
 - 7.6.5 Contractor must be available for technical interpretations and guidance anytime.

8. AWARDING OF AUDIT CONTRACTS (tentative timetable)

- | | | |
|-----|---|----------|
| 8.1 | Final Date of Receipt of Proposals | 06/25/03 |
| 8.2 | Notification of Finalists | 06/30/03 |
| 8.3 | Oral Presentation by Finalists | 07/10/03 |
| 8.4 | 1 st Reading by City Council | 07/21/03 |
| 8.5 | Council Approval | 07/28/03 |

**PROPOSAL
SPECIFICATION NO. 03-166**

**BID OPENING TIME: 12:00 NOON
DATE: Wednesday, June 25, 2003**

The undersigned, having full knowledge of the requirements of the City of Lincoln for the below listed phases and the contract documents (which include Notice, Instructions, this Proposal, Specifications, Contract, and any and all addenda) and all other conditions of the Proposal, agrees to enter into a contract with the City the below listed fees for the performance of this Specification, complete in every respect, in strict accordance with the contract documents at and for fees listed below.

ADDENDA RECEIPT: The receipt of addenda to the specification numbers ____ through ____ are hereby acknowledged. Failure of any submitter to receive any addendum or interpretation of the specifications shall not relieve the submitter from any obligations specified in the request. All addenda shall become part of the final contract document.

BIDDING SCHEDULE

CITY AUDITING SERVICES AND WATER & WASTEWATER AUDITING SERVICES

City	2003	\$_____;	2004	_____;	2005	_____;	2006	_____;
Water & Wastewater	2003	\$_____;	2004	_____;	2005	_____;	2006	_____;
EMS Fund	2003	\$_____;	2004	_____;	2005	_____;	2006	_____;
Landfill Revenue	2003	\$_____;	2004	_____;	2005	_____;	2006	_____;
Keno	2003	\$_____;	2004	_____;	2005	_____;	2006	_____;
Fees, Other Services	2003	\$_____;	2004	_____;	2005	_____;	2006	_____;

AFFIRMATIVE ACTION PROGRAM: Successful bidder will be required to comply with the provisions of the City's Affirmative Action Policy (Contract Compliance, Sec. 1.16). The Equal Opportunity Officer will determine compliance or non-compliance with the City's policy upon a complete and substantial review of successful bidder's equal opportunity policies, procedures and practices.

The undersigned signatory for the bidder represents and warrants that he has full and complete authority to submit this proposal to the City, and to enter into a contract if this proposal is accepted.

**RETURN 6 COMPLETE COPIES OF PROPOSAL AND SUPPORTING MATERIAL.
MARK OUTSIDE OF BID ENVELOPE: SEALED BID FOR SPEC. 03-166**

COMPANY NAME

BY (Signature)

STREET ADDRESS or P.O. BOX

(Print Name)

CITY, STATE ZIP CODE

(Title)

TELEPHONE No. FAX No.

(Date)

**EMPLOYER'S FEDERAL I.D. NO.
OR SOCIAL SECURITY NUMBER**

ESTIMATED DELIVERY DAYS

E-MAIL ADDRESS

TERMS OF PAYMENT

Proposals may be inspected in the Purchasing Division offices during normal business hours, **after** tabulation by the purchasing agent. If you desire a copy of the bid tabulation to be mailed to you, you must enclose a self-addressed stamped envelope with your bidding documents. Bid tabulations can also be viewed on our website at: <http://www.ci.lincoln.ne.us/city/finance/purch/specindx.htm>

INSTRUCTIONS TO PROPOSERS

CITY OF LINCOLN, NEBRASKA PURCHASING DIVISION

1. PROPOSAL PROCEDURE

- 1.1 Each RFP must be legibly printed in ink or by typewriter, include full name, business address, and telephone no. of the Proposer; and be signed in ink by the Proposer.
- 1.2 Response by a firm/organization other than a corporation must include the name and address of each member.
- 1.3 A response by a corporation must be signed in the name of such corporation by a duly authorized official thereof.
- 1.4 Any person signing a response for a firm, corporation, or other organization must show evidence of his authority so to bind such firm, corporation, or organization.
- 1.5 Proposals received after the time and date established for receiving offers will be rejected.

2. EQUAL OPPORTUNITY

- 2.1 Each proposer agrees that it shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, disability, national origin, age, or marital status. In the employment of persons, proposer shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to race, color, religion, sex, disability, national origin, age, or marital status.

3. DATA PRIVACY

- 3.1 Proposer agrees to abide by all applicable State and Federal laws and regulations concerning the handling and disclosure of private and confidential information concerning individuals and corporations as to inventions, copyrights, patents and patent rights.
- 3.2 The proposer agrees to hold the City harmless from any claims resulting from the proposer's unlawful disclosure or use of private or confidential information.

4. PROPOSER'S REPRESENTATION

- 4.1 Each proposer by signing and submitting an offer, represents that he/she has read and understands the specification documents, and the offer has been made in accordance therewith.
- 4.2 Each offer for services further represents that the proposer is familiar with the local conditions under which the work will be done and has correlated the observations with the requirements of the RFP.
- 4.3 Proposer warrants and represents to the City that all software/firmware/hardware/equipment/systems developed, distributed, installed or programmed by Proposer pursuant to this Specification and Agreement.
 - 4.3.1 That all date recognition and processing by the software/firmware/hardware/equipment/system will include the four-digit-year format and will correctly recognize and process the date of February 29, and any related data, during Leap years; and

- 4.3.2 That all date sorting by the software/firmware/hardware/equipment/system that includes a "year category" shall be done based on the four-digit-year format. Upon being notified in writing by the City of the failure of any software/firmware/hardware/equipment/systems to comply with this Specification and Agreement, Contractor will, within 60 days and at no cost to the City, replace or correct the non-complying software/firmware/hardware/equipment/systems with software/firmware/hardware/equipment/systems that does comply with this Specification and Agreement.

5. INDEPENDENT PRICE DETERMINATION

- 5.1 By signing and submitting this RFP, the proposer certifies that the prices offered have been arrived at independently, without consultation, communication or agreement, for the purpose of restricting competition, with any other proposer competitor; unless otherwise required by law, the prices which have been quoted in this offer have not been knowingly disclosed by the proposer prior to RFP opening directly or indirectly to any other competitor; no attempt has been made, or will be made, by the proposer to induce any person or firm to submit, or not to submit, a response for the purpose of restricting competition.

6. SPECIFICATION CLARIFICATION

- 6.1 Proposers shall promptly notify the Purchasing Agent of any ambiguity, inconsistency or error which they may discover upon examination of specification documents.
- 6.2 Proposers desiring clarification or interpretation of the specification documents shall make a written request which must reach the Purchasing Agent at least seven (7) calendar days prior to date and time for response receipt.
- 6.3 Interpretations, corrections and changes made to the specification documents will be made by written addenda.
- 6.4 Oral interpretations/changes to Specification Documents made in any other manner, will not be binding on the City; proposers shall not rely upon oral interpretations.

7. ADDENDA

- 7.1 Addenda are written instruments issued by the City prior to the date for receipt of offers which modify or interpret the specification document by addition, deletion, clarification or correction.
- 7.2 Addenda will be mailed or delivered to all who are known by the City to have received a complete set of specification documents.
- 7.3 Copies of addenda will be made available for inspection at the office of the Purchasing Agent.

- 7.4 No addendum will be issued later than forty-eight (48) hours prior to the date and time for receipt of offers, except an addendum withdrawing the RFP, or addendum including postponement.
- 7.5 Proposers shall ascertain prior to submitting their offer that they have received all addenda issued, and they shall acknowledge receipt of addenda on the proposal form.

8. ANTI-LOBBYING PROVISION

- 8.1 During the period between the bid close date and the contract award, bidders, including their agents and representatives, shall not directly discuss or promote their bid with any member of the City Council or City Staff except in the course of City-sponsored inquiries, briefings, interviews, or presentations, unless requested by the City.

9. EVALUATION AND AWARD

- 9.1 The signed proposal shall be considered an offer on the part of the proposer. Such offer shall be deemed accepted upon issuance by the City of purchase orders, contract award notifications, or other contract documents appropriate to the work.
- 9.2 No offer shall be withdrawn for a period of ninety (90) calendar days after the time and date established for receiving offers, and each proposer agrees in submitting an offer.
- 9.3 In case of a discrepancy between the unit prices and their extensions, the unit prices shall govern.
- 9.4 The RFP process is designed to be a competitive negotiation platform, where price is not required to be the sole determinative factor; also the City has the flexibility to negotiate with a select firm or selected firms to arrive at a mutually agreeable relationship.
- 9.5 A committee will be assigned the task of reviewing the proposals received.
 - 9.5.1 The committee may request documentation from Proposer(s) of any information provided in their proposal response, or require the Proposer to clarify or expand qualification statements.
 - 9.5.2 The committee may also require a site visit and/or verbal interview with a Proposer or select group of Proposers to clarify and expand upon the proposal response.
- 9.6 The offer will be awarded to the lowest responsive, responsible proposer whose proposal will be most advantageous to the City, and as the City deem will best serve their requirements.
- 9.7 The City reserves the right to accept or reject any or all offers, parts of offers; request new proposals, waive irregularities and technicalities in offers; or to award the RFP on a split-order basis, or lump-sum basis; such as shall best serve the requirements and interests of the City.

10. INDEMNIFICATION

- 10.1 The proposer shall indemnify and hold harmless the City, its members, its officers and employees from and against all claims, damages, losses, and expenses,

including, but not limited to attorney's fees arising out of or resulting from the performance of the contract, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property other than goods, materials and equipment furnished under this contract) including the loss of use resulting therefrom; is caused in whole or part by any negligent act or omission of the proposer, any subcontractor, or anyone directly or indirectly employed by any one of them or anyone for whose acts made by any of them may be liable, regardless of whether or not it is caused by a party indemnified hereunder.

- 10.2 In any and all claims against the City or any of its members, officers or employees by an employee of the proposer, any subcontractor, anyone directly or indirectly employed by any of them or by anyone for whose acts made by any of them may be liable, the indemnification obligation under paragraph 10.1 shall not be limited in any way by any limitation of the amount or type of damages, compensation or benefits payable by or for the proposer or any subcontractor under worker's or workmen's compensation acts, disability benefit acts or other employee benefit acts.

11. LAWS

- 11.1 The Laws of the State of Nebraska shall govern the rights, obligations, and remedies of the Parties under this proposal and any agreement reached as a result of this process.

12. AWARD

- 12.1 The RFP process is designed to be a competitive negotiation platform, where price is not required to be the sole determinative factor; also the City has the flexibility to negotiate with a selected firm or firms to arrive at a mutually agreeable relationship.
- 12.2 The City shall be the sole judge as to merits of the proposal, and the City's decision will be final.
- 12.3 A committee will be assigned by the Mayor with the task of reviewing the proposals received.
 - 12.3.1 The committee may request documentation from Proposer(s) of any information provided in their proposal response, or require the proposer to clarify or expand qualification statements.
 - 12.3.2 A short list of firms from proposals submitted may be selected for a presentation to the committee and ranked by committee members.
- 12.4 Final approval to enter into contract negotiations with the top ranked firm will be by the Mayor of the City of Lincoln.
- 12.5 The City shall not be liable for any expense incurred in connection with preparation of a response to this RFP.
- 12.6 The contract document shall incorporate by reference all requirements, terms and conditions of the solicitation, proposal received and all negotiated details.

CONTRACT DOCUMENTS

CITY OF LINCOLN

NEBRASKA

CITY OF LINCOLN, NEBRASKA

CONTRACT AGREEMENT

THIS CONTRACT, made and entered into this ____ day of _____ 2003, by and between _____ hereinafter called contractor, and the City of Lincoln, Nebraska, a municipal corporation, hereinafter called the City.

WITNESS, that:

WHEREAS, the City has caused to be prepared, in accordance with law, Specifications, Plans, and other Contract Documents for the Work herein described, and has approved and adopted said documents and has caused to be published an advertisement for and in connection with said Work, to-wit:

_____, and,

WHEREAS, the Contractor, in response to such advertisement, has submitted to the City, in the manner and at the time specified, a sealed Proposal in accordance with the terms of said advertisement; and,

WHEREAS, the City, in the manner prescribed by law has publicly opened, read aloud, examined, and canvassed the Proposals submitted in response to such advertisement, and as a result of such canvass has determined and declared the Contractor to be the lowest responsible bidder for the said Work for the sum or sums named in the Contractor's Proposal, a copy thereof being attached to and made a part of this Contract;

EQUAL EMPLOYMENT OPPORTUNITY: In connection with the carrying out of this project, the contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry, disability, age or marital status. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, ancestry, disability, age or marital status. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other compensation; and selection for training, including apprenticeship.

NOW, THEREFORE, in consideration of the sums to be paid to the Contractor and the agreements herein contained, the Contractor and the City have agreed and hereby agree as follows:

The Contractor agrees to (a) furnish all tools, equipment, supplies, superintendence, transportation, and other construction accessories, services, and facilities; (b) furnish all materials, supplies, and equipment specified to be incorporated into and form a permanent part of the complete work; (c) provide and perform all necessary labor in a substantial and workmanlike manner and in accordance with the provisions of the Contract Documents; and (d) execute construct, and compete all Work included in and covered by the City's award of this Contract to the Contractor, such award being based on the acceptance by the City of the Contractor's Proposal, or part thereof, as follows:

The City agrees to pay to the Contractor for the performance of the Work embraced in this Contract, the Contractor agrees to accept as full compensation therefor, the following sums and prices for all Work covered by and included in the Contract award and designated above, payment thereof to be made in the manner provided by the City:

\$

CONTRACT AGREEMENT

CONTRACT AGREEMENT

The Work included in this Contract shall begin as soon as possible from date of executed contract. The completion shall be _____.

GUARANTEE:

A performance bond in the full amount of the contract shall be required for all construction contracts. This bond shall remain in effect during the guarantee period as stated in the specifications.. Once the project is completed, the contractor may submit a maintenance bond in place of the performance bond.

The Contract Documents comprise the Contract, and consist of the following:

1. The Instructions to Bidders
2. The Accepted Proposal
3. The Contract Agreements
4. The Specifications
- *5. The City of Lincoln Standard Specifications for Municipal Construction
 - a. General Conditions
 - b. General Specifications
 - c. Construction & Materials Specifications
- ** 6. The Plans (including the Schedule of Approximate Quantities)
7. The Construction Bonds
8. The Special Provisions

* If project includes paving, water, sewer, sidewalk, lighting or traffic signal work, the City of Lincoln Standard Specifications for Municipal Construction will apply, which are on file in the office of the City Clerk. Copies may be obtained at the Office of the City Engineer.

** The following is an enumeration of the Plans, which are entitled:

CONTRACT AGREEMENT

These Contract Agreements, together with the other Contract Documents herein above mentioned, form this Contract, and the are as fully a part of the Contract as if hereto attached or herein repeated.

The Contractor and the City hereby agree that all the terms and conditions of this Contract shall by these presents be binding upon themselves, and their heirs, administrators, executors, legal and personal representatives, successors, and assigns.

IN WITNESS WHEREOF, the Contractor and the City do hereby execute this contract.

EXECUTION BY THE CITY OF LINCOLN, NEBRASKA

ATTEST:

CITY OF LINCOLN, NEBRASKA

City Clerk

Mayor

Approved by Executive or No. _____
dated _____

EXECUTION BY CONTRACTOR

IF A CORPORATION:

Name of Corporation

(Address)

ATTEST:

Secretary (SEAL)

By: _____
Duly Authorized Official

Legal Title of Official

IF OTHER TYPE OF ORGANIZATION:

Name of Organization

Type of Organization

(Address)

By: _____
Member

By: _____
Member

IF AN INDIVIDUAL:

Name

Address

Signature

A. GENERAL INFORMATION

There are two types of construction bonds that are required by statutes for public work in many jurisdictions and are widely used for other projects as well.

Construction Performance Bond

Construction Payment Bond

The Construction Performance Bond is an instrument that is used to assure the availability of funds to complete the construction.

The Construction Payment Bond is an instrument that is used to assure the availability of sufficient funds to pay for labor, materials and equipment used in the construction. For public work the Construction Payment Bond provides rights of recovery for workers and suppliers similar to their rights under the mechanics lien laws applying to private work.

The objective underlying the re-writing of construction bond forms was to make them more understandable to provide guidance to users. The intention was to define the rights and responsibilities of the parties, without changing the traditional rights and responsibilities that have been decided by the courts. The new bond forms provide helpful guidance regarding time periods for various notices and actions and clarify the extent of available remedies.

The concept of pre-default meeting has been incorporated into the Construction Performance Bond. All of the participants favored early and informal resolution of the problems that may precipitate a default, but some Surety companies were reluctant to participate in pre-default settings absent specific authorization in the bond form.

The responsibilities of the Owner and the options available to the Surety when a default occurs are set forth in the Construction Performance Bond. Procedures for making a claim under the Construction Payment Bond are set forth in the form.

EJCDC recommends the use of two separate bonds rather than a combined form. Normally the amount of each bond is 100 percent of the contract amount. The bonds have different purposes and are separate and distinct obligations of the Surety. The Surety Association reports that the usual practice is to charge a single premium for both bonds and there is no reduction in premium for using a combined form or for issuing one bond without the other.

B. COMPLETING THE FORMS

Bonds have important legal consequences; consultation with an attorney and a bond specialist is encouraged with respect to federal, state and local laws applicable to bonds and with respect to completing or modifying the bond forms.

Both bond forms have a similar format and the information to be filled in is ordinarily the same on both bonds. If modification is necessary, the modifications may be different.

The bond forms are prepared for execution by the Contractor and the Surety. Evidence of authority to bind the Surety is usually provided in the form of a power of attorney designating the agent who is authorized to sign on behalf of the Surety. The power of attorney should be filed with the signed bonds.

Each bond must be executed separately since they cover separate and distinct obligations.

Preferably the bond date should be the same date as the contract, but in no case should the bond date precede the date of the contract.

CONSTRUCTION PERFORMANCE BOND

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

SURETY (Name and Principal
Place of Business):

Owner (Name and Address):

City of Lincoln

555 South 10th St.

Lincoln, NE 68508

CONSTRUCTION CONTRACT

Date:

Amount: \$

Description (Name and Location):

BOND

Date (Not earlier than Construction Contract Date)

Amount: \$

Modifications to this Bond Form:

CONTRACTOR AS PRINCIPAL

Company: (Corp. Seal)

SURETY

Company: (Corp. Seal)

Signature: _____

Name and Title:

Signature: _____

Name and Title:

CONTRACTOR AS PRINCIPAL

Company: (Corp. Seal)

SURETY

Company: (Corp. Seal)

Signature: _____

Name and Title:

Signature: _____

Name and Title:

EJCDC NO. 1910-28a (1984 Edition)

Prepared through the joint efforts of The Surety Assoc. of America. Engineers' Joint Contract Documents Committee. The Associated General Contractors of America, and the American Institute of Architects.

1. The Contractor and the Surety, jointly and severally, bind themselves their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.
2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except to participate in conferences as provided in Subparagraph 3.1.
3. If there is no Owner Default, the Surety's obligation under this Bond shall arise after:
 - 3.1 The Owner has notified the Contractor and the Surety at its address described in Paragraph 10 below, that the Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Construction Contract. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default and
 - 3.2 The Owner has declared a Contractor Default and formally terminated the Contractor's right to complete the contract. Such Contractor Default shall not be declared earlier than twenty days after the Contractor and the Surety have received notice as provided in Subparagraph 3.1; and
 - 3.3 The Owner has agreed to pay the Balance of the Contract Price to the Surety in accordance with the terms of the Construction Contract or to a contractor selected to perform the Construction Contract in accordance with the terms of the contract with the Owner.
4. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:
 - 4.1 Arrange for the Contractor, with consent of the Owner, to perform and complete the Construction Contract, or
 - 4.2 Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors; or
 - 4.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and the contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 6 in excess of the Balance of the Contract Price incurred by the Owner resulting from the Contractor's default, or
 - 4.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:
 1. After investigation, determine the amount for which it may be liable to the Owner and as soon as practicable after the amount is determined tender payment therefor to the Owner; or
 2. Deny liability in whole or in part and notify the Owner citing reasons therefor.
5. If the Surety does not proceed as provided in Paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Subparagraph 4.4 and the Owner refuses payment tendered or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.
6. After the Owner has terminated the Contractor's right to complete the Construction Contract, and if the Surety elects to act under Subparagraph 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. To the limit of the amount of this Bond, but subject to commitment by the Owner of the Balance of the Contract Price to mitigation of costs and damages on the Construction Contract, the Surety is obligated without duplication for:
 - 6.1 The responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
 - 6.2 Additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 4; and
 - 6.3 Liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.
7. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, or successors.
8. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related sub-contracts, purchase orders and other obligations.
9. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
10. Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page.
11. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
12. Definitions.
 - 12.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.
 - 12.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.
 - 12.3 Contractor Default: Failure of the Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract.
 - 12.4 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

CONSTRUCTION PAYMENT BOND

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

SURETY (Name and Principal Place
Of Business):

Owner (Name and Address):

City of Lincoln
555 South 10th St.
Lincoln, NE 68508

CONSTRUCTION CONTRACT

Date:

Amount: \$

Description (Name and Location):

BOND

Date (Not earlier than Construction Contract Date):

Amount: \$

Modifications to this Bond Form:

CONTRACTOR AS PRINCIPAL

Company: (Corp. Seal)

SURETY

Company: (Corp. Seal)

Signature: _____

Name and Title:

Signature: _____

Name and Title:

CONTRACTOR AS PRINCIPAL

Company: (Corp. Seal)

SURETY

Company: (Corp. Seal)

Signature: _____

Name and Title:

Signature: _____

Name and Title:

EJCDC NO. 1910-28B (1984 Edition)

Prepared through the joint efforts of The Surety Assoc. of America. Engineers' Joint Contract Documents Committee. The Associated General Contractors of America, and the American Institute of Architects.

1. The Contractor and the Surety, jointly and severally, bind themselves their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference.
 2. With respect to the Owner, this obligation shall be null and void if the Contractor:
 - 2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and
 - 2.2 Defends, indemnifies and holds harmless the Owner from all claims, demands, liens or suits by any person or entity who furnished labor, materials or equipment for use in the performance of the Construction Contract, provided the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety, and provided there is no Owner Default.
 3. With respect to Claimants, this obligation shall be null and void if the Contractor promptly makes payment, directly or indirectly, for all sums due.
 4. The Surety shall have no obligation to Claimants under this Bond until:
 - 4.1 Claimants who do not have a direct contract with the Contractor have given notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof to the Owner, stating that a claim is being made under this Bond and with substantial accuracy the amount of the claim.
 - 4.2 Claimants who do not have a direct contract with the Contractor:
 1. Have furnished written notice to the Contractor and sent a copy, or notice thereof, to the Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed, and
 2. Have either received a rejection in whole or in part from the Contractor, or not received within 30 days of furnishing the above notice any communication from the Contractor by which the Contractor has indicated the claim will be paid directly or indirectly; and
 3. Not having been paid within the above 30 days, have sent a written notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the Contractor.
 5. If a notice required by Paragraph 4 is given by the Owner to the Contractor or to the Surety, that is sufficient compliance.
 6. When the Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at the Surety's expense take the following actions:
 - 6.1 Send an answer to the Claimant, with a copy to the Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.
 - 6.2 Pay or arrange for payment of any undisputed amounts.
 7. The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
 8. Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any Construction Performance Bond.
- By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and the Surety under this Bond, subject to the Owner's priority to the funds for the completion of the work.
9. The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.
 10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.
 11. No suite or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the work or part of the work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Subparagraph 4.1 or Clause 4.1 (iii), or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
 12. Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety, the Owner or the Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.
 13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted here from and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is, that this Bond shall be construed as a statutory bond and not as a common law bond.
 14. Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.
 15. DEFINITIONS
 - 15.1 Claimant: An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials, or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.
 - 15.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.
 - 15.3 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.